

Remarks

This Amendment is entered in response to the Office Action of September 9, 2003. In this Office Action, the Examiner made the following objections and rejections:

1. Claims 1-20 were rejected as allegedly being indefinite under 35 U.S.C. 112.
2. Claims 10 and 12 were rejected as allegedly being indefinite under 35 U.S.C. 112.
3. Claims 1, 3-5, and 10 were rejected as allegedly being obvious in view of United States Patent 6,410,687 to Valet et al.

Applicants respectfully request reconsideration.

WITH RESPECT TO CLAIMS 1-20

The Examiner has rejected claims 1-20 as being indefinite under 35 U.S.C. 112, second paragraph for allegedly failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner stated;

In claim 1, line 1, the status of a living organism is stated as the claimed process. In the actual claim steps there is neither a living organism limitation anywhere nor any indication of a status. The claim is therefore vague and indefinite as to whether the preamble or the actual claim steps control the metes and bounds of the claim practice. Clarification via clearer claim wording is requested. Claims which depend directly or indirectly from claim 1 also contain this unclarity due to their dependence.

The applicants disagree that the use of the subject preamble renders claims 1-20 indefinite. The applicants assert that the Examiner in fact found the claims were definite, as evidenced by the fact that the Examiner was able to conduct a search based on said claims. Nevertheless, to facilitate the prosecution of the application, the element "determining the status of a living organism based on the comparison of the pattern of

said multiplicity of microtubule associated proteins disposed between said first microtubule and said second microtubule with historic phenotypic data” has been added to all of the claims.

WITH RESPECT TO CLAIMS 10 AND 12

The Examiner has rejected claims 10 and 12 as being indefinite under 35 U.S.C. 112, second paragraph for allegedly failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner stated;

Claims 10 and 12 are additionally vague and indefinite in that they cite “said sampled cells” in line 1, but no antecedent basis is present for such “said” cells. Clarification via clearer claim wording is requested.

While the applicants do not necessarily agree that the use of the phrase “sampled cells” is indefinite, claims 10 and 12 have been amended to refer to “said cellular material” in reference to the element of the same name found in the original claim 1 as filed.

ALL REJECTIONS OF CLAIMS 2, 6-9, AND 11-21 HAVE BEEN ADDRESSED

The applicants note that claims 2, 6-9, and 11-21 were rejected solely under 35 U.S.C. 112. The Examiner made no rejections of claims 2, 6-9, and 11-21 based on prior art. The applicants assert that the above amendments have addressed the 35 U.S.C. 112 issues raised by the Examiner. To further facilitate the prosecution of these substantially allowed claims, the applicants have rewritten these claims in independent format. As all of the rejections of claims 2, 6-9, and 11-21 made by the Examiner have been addressed, the applicants respectfully assert that the claims 2, 6-9, and 11-21 as amended are clearly allowable.

WITH RESPECT TO CLAIMS 1, 3-5, AND 10

The Examiner has rejected claims 1, 3-5, and 10 under 35 U.S.C. 103(a) as being unpatentable in view of United States Patent 6,410,687 to Vale et al. While the applicants do not necessarily agree that such a rejection is proper, to facilitate the prosecution of this application, the rejected claims have been canceled without prejudice.

CORRECTION OF TYPOGRAPHICAL ERRORS

Various typographic errors have been corrected in the original claims as filed.

In the original claim as filed, claim 1 inadvertently omitted step "C" and used the label "F" twice. Several elements of claim 1, 2, 3, and 21 have had other minor typographic errors corrected. The changes are clearly illustrated below and/or in the "Amendments to the Claims" beginning on page 2. When claims 2, 6-9, and 11-21 were rewritten in independent format, the appropriate corrections were carried over.

1. (Canceled) A process for determining the status of a living organism, comprising the steps of:

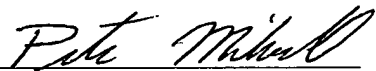
- (a) sampling cellular material which contains at least a first microtubule, a second microtubule, and a multiplicity of microtubule associated proteins disposed between said first microtubule and said second microtubule,
- (b) imaging said first microtubule, said second microtubule, and said multiplicity of microtubule associated proteins disposed between said first microtubule and said second microtubule,
- ~~[[d]]~~ (c) determining the positions of said first microtubule, said second microtubule, and said multiplicity of microtubule associated proteins disposed between said first microtubule and said second microtubule,
- ~~[[e]]~~ (d) determining the pattern of said multiplicity of microtubule associated proteins disposed between said first microtubule and said second microtubule,
- ~~[[f]]~~ (e) comparing the positions [[of]] said first microtubule, said second microtubule, and said multiplicity of microtubule associated proteins disposed between said first microtubule and said second microtubule, with historic phenotypic data, and
- (f) comparing determining the status of a living organism based on the comparison of the pattern of said multiplicity of microtubule associated proteins

disposed between said first microtubule and said second microtubule with said historic phenotypic data.

In the original claims as filed, two claims were inadvertently given the same number 15. Claim 16 and all subsequent claims have been renumbered to address this. Likewise, any claims that were dependent on an incorrectly numbered claim have been amended to preserve their original dependency. Claim 21 (previously claim 20) has been amended to correct a spelling error.

Applicants respectfully request reconsideration and that a timely Notice of Allowance be issued in this case. The applicants assert that the claims as amended have obviated all of the Examiner's rejections and objections, and as such, the amended claims are clearly allowable. If, for any reason, the Patent Examiner believes that a telephone conference with applicants' agent might in any way facilitate the prosecution of this case, the Examiner is respectfully requested to call such agent.

Respectfully submitted,
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By 

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